

HOUSE No. 1840

By Mr. Rodrigues of Westport (by request), petition of Michael J. Rodrigues, Robert A. O'Leary and another relative to the competitive determination of workers compensation insurance rates. Labor and Workforce Development.

The Commonwealth of Massachusetts

PETITION OF:

Michael J. Rodrigues
Jim Harrington

Robert P. Spellane

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE COMPETITIVE DETERMINATION OF WORKERS COMPENSATION INSURANCE RATES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 53A of Chapter 152 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 inserting the following language immediately preceding subsection
4 (1):—
5 Section 53A. For the purposes of this section, the following
6 words shall have the following meanings:
7 “Loss cost modifier (“LCM”)” shall mean that provision within
8 the rates proposed or approved for any insurer or Pool writing
9 workers’ compensation and employers’ liability insurance, intended
10 to account for such company’s or Pool’s (i) projected expenses, other
11 than allocated loss adjustment expense; (ii) profit and contingency
12 allowance; and (iii) expected difference in loss experience and/or
13 allocated loss adjustment expense from that of the loss and allocated
14 loss adjustment experience of the industry as a whole. Except for
15 any expense constant component, LCMs shall be expressed as deci-
16 mals to be applied equally and uniformly to the prospective loss
17 costs approved by the Commissioner for use by the filer across all
18 hazard and industry groups. The LCM shall not include any provi-
19 sion to account for assessments collected on behalf of the residual

20 market or to support any trust funds created pursuant to section
21 sixty-five.

22 “Pool” shall mean the reinsurance pool established pursuant to
23 section sixty-five C.

24 “Prospective loss cost” shall mean that portion of a workers’ com-
25 pensation and employers’ liability rate that does not include provi-
26 sions for expenses (other than allocated loss adjustment expenses),
27 profit and contingency, or variations in company loss and allocated
28 loss adjustment expense experience as compared with the experience
29 of the industry as a whole. Such loss costs shall be based on histor-
30 ical aggregate losses and allocated loss adjustment expenses, both
31 reasonably adjusted through development to their ultimate value and
32 projected through trending to a future point in time.

33 “Rate” shall mean the cost of workers’ compensation and
34 employers’ liability insurance per exposure unit, which shall be
35 derived from a prospective loss cost for such exposure adjusted by a
36 filed LCM.

1 SECTION 2. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (1), and inserting in place
3 thereof the following:—

4 (1) Any insurance company authorized to transact business in this
5 commonwealth under subclauses (b) and (e) of clause Sixth of
6 section forty-seven of chapter one hundred and seventy-five may,
7 except as provided in clause (c) of section fifty-four of said chapter
8 one hundred and seventy-five, insure the payment of the compensa-
9 tion provided for by this chapter, and when any such company
10 insures such payment, it shall file with the commissioner of insur-
11 ance, or, if it is a member of or subscriber to a rating organization
12 under section fifty-two C, authorize such rating organization to file
13 with the commissioner on its behalf, its classification of risks and
14 projected loss costs relating thereto.

1 SECTION 3. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (2), and inserting in place
3 thereof the following:—

4 (2) The commissioner shall designate a rating organization, duly
5 qualified under section fifty-two C, to file with the Commissioner
6 proposed loss costs and classifications of risks associated with

7 writing workers' compensation and employers' liability insurance in
8 the commonwealth, for use in both the voluntary market and the
9 Pool. Said rating organization shall annually file, on or before
10 November 1 of the year such filing is made, industry-wide classifi-
11 cations of risks, prospective loss costs, and minimum premium
12 determination rules for use throughout the entire market. Prospec-
13 tive loss costs and classifications of risk shall be developed for the
14 entire insured workers' compensation market utilizing loss experi-
15 ence without regard to whether such experience came from the vol-
16 untary market or the Pool. In any instance in which the most recent
17 aggregated three years of calendar/accident-year data of the loss-
18 plus-all-expense ratios of the top fifteen insurers in voluntary and
19 Pool market share—with all the companies smaller than the fifteenth
20 largest combined to make the fifteenth "company" in such list—con-
21 tain any companies whose loss-plus-all expense ratios exceed 150%
22 of the median combined ratio of such companies, the Commissioner
23 shall, when considering the appropriateness of filed loss costs at the
24 next prospective loss cost proceeding, exclude the voluntary and
25 residual market premiums, payrolls, losses and allocated loss adjust-
26 ment expenses of such high-ratio companies.

27 The designated rating organization shall also file all necessary
28 parameters, rating and statistical reporting rules, and forms to be
29 used by any company wishing to write retrospectively rated or large
30 deductible policies. The designated rating organization may also file
31 any desired changes to existing rating plans and other adjustments
32 requested to be applied to the rates and classifications within the vol-
33 untary market or Pool. Prospective loss costs and any additional
34 requests made within prospective loss cost filings shall be approved
35 by the commissioner only if it is determined after a hearing that their
36 use will not, given reasonable LCMs, produce premiums that are
37 inadequate, excessive, or unfairly discriminatory.

38 Non-rating organization members making individual company
39 prospective loss cost filings must utilize only such classifications of
40 risk and rating plans as are consistent with those filed by the desig-
41 nated rating organization as set forth herein and approved by the
42 commissioner.

43 Within thirty days after the prospective loss cost filing under this
44 Section the commissioner shall initiate a hearing to ensure that (i)
45 the proposed classifications are reasonable and equitable, and (ii) the

46 proposed loss costs fall within a range of reasonableness and are not
47 excessive, inadequate, or unfairly discriminatory for the risks to
48 which they apply.

49 Any hearing on projected industry loss costs shall be completed
50 within forty-five days of its commencement and a written decision
51 thereon shall be issued within thirty days of the close of such
52 hearing. If, after said hearing, the commissioner disapproves any
53 part of the filing, the reasons for such disapproval shall be specified
54 in the decision which shall also indicate what changes would be nec-
55 essary to make any refiling approvable. Any projected loss cost
56 filing shall be deemed approved if the commissioner does not com-
57 mence the hearing within thirty days of receipt of the filing, com-
58 plete the hearing within forty-five days of its commencement, or
59 issue a written decision within thirty days of its completion. The
60 rating organization, non-member company that has made an indi-
61 vidual prospective loss cost filing, or other aggrieved party to a pro-
62 ceeding may seek review of the commissioner's decision before the
63 Supreme Judicial Court.

1 SECTION 4. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (4), and inserting in place
3 thereof the following:—

4 (4) (a) Simultaneous with its annual filing of prospective
5 industry-wide loss costs, the rating organization designated by the
6 commissioner to administer the Pool pursuant to section sixty-five C
7 shall separately file LCMs to be used in the Pool as of the effective
8 date of such new loss costs. Such LCMs shall be approved as ade-
9 quate, not-excessive and not unfairly discriminatory if and only if
10 they reflect the following factors:

11 (i) A loss-and allocated loss-adjustment expense multiplier of 1.0;

12 (ii) A multiplier reflecting a reasonable estimate of the general
13 and unallocated loss adjustment expenses in the overall workers'
14 compensation market;

15 (iii) Any appropriate loss and expense constants;

16 (iv) A reasonable profit-and-contingency multiplier; and

17 (v) Such tables and parameters as are necessary for member com-
18 panies to write retrospectively rated or deductible policies.

19 In addition to its final proposed modifier, each insurer's LCM
20 filing shall set forth the following constituent components of such
21 modifier:

22 (i) A multiplier which shall reflect the filer's estimate of its loss
23 and allocated loss adjustment expense. Each such multiplier shall be
24 at least .75, but no greater than 1.25 of the industry loss and allo-
25 cated loss adjustment expense costs approved by the Commissioner.
26 The Commissioner may approve a filing that includes different mul-
27 tipliers for different industrial classes under this paragraph but only
28 if such differential multipliers are actuarially supported by the filer
29 and are not violative of subsection (5).

30 (ii) A multiplier reflecting the filer's estimate of its general and
31 unallocated loss adjustment expense costs. Such multiplier shall not
32 be lower than 0.33 or higher than 0.50 of the industry loss and allo-
33 cated loss adjustment expense costs approved by the Commissioner.

34 (iii) A multiplier of the industry loss and allocated loss adjustment
35 expense costs approved by the Commissioner reflecting the filer's
36 estimate of its profit and contingency requirements. Such multiplier
37 shall be no less than the result of subtracting 1.0 from the average of
38 1.0 and the workers' compensation discount factor applicable to the
39 earliest tax year shown for countrywide flows on the most recent
40 IRS publication regarding discount factors for unpaid losses under
41 Section 846 or any corresponding successor section of the Internal
42 Revenue Code, and shall be no greater than seven hundred basis
43 points (0.07) higher than said result.

44 (iv) Any expense or loss constants the filer proposes to charge;
45 provided, however, that no such constants shall exceed those cur-
46 rently approved for use in the Pool at the time of the company LCM
47 filing.

48 The factor to be multiplied by the approved loss and ALAE cost
49 by class shall be the sum of the multipliers described above in (i),
50 (ii), and (iii). The final company modifier shall also include any
51 constants described in (iv).

52 (c) Both the Pool and individual company insurers' final rates
53 shall be determined by applying filed loss cost modifiers to the most
54 recently approved loss and ALAE costs for the industry as a whole.
55 Rating plans for retrospectively rated or deductible policies written
56 by an insurer shall be consistent with and derivable from parameters
57 approved in the industry-wide loss cost filing. Companies shall use

58 the rates, rules or amounts approved for the Pool for minimum pre-
59 mium determinations and for per capita and other non-payroll-based
60 class rates. The classification and experience rating systems
61 approved for the industry as a whole in accordance with this section
62 shall be adopted by every insurer without modification.

63 Except where company solvency or continuation is an issue or
64 where there has been a law change affecting company costs, indi-
65 vidual company LCM filings shall be effective no earlier than thirty
66 days following their receipt by the division of insurance; provided,
67 however, that no Pool or individual company filed LCM shall
68 become effective if, within twenty-one days of its receipt by the
69 Division, the state rating bureau asserts in writing to the filing com-
70 pany or bureau and the commissioner of insurance that there is one
71 or more defects in the form or manner of any such filing, explaining
72 the nature of such alleged defects and recommending an acceptable
73 manner of their removal. In such instances the company or Pool
74 may not use its filed LCM and may either revise its filing in the
75 manner recommended by the state rating bureau or request a hearing
76 to review the prohibition of its use. The state rating bureau shall dis-
77 approve an individual company's LCMs as defective only for the
78 following reasons: (i) such filing contains one or more LCM compo-
79 nents that are violative of this section; (ii) such filing would tend
80 to impair or threaten the solvency of the filer; (iii) such filing would
81 likely create a monopoly in the market; or (iv) such filing is
82 expected to produce one or more rates, classifications or premiums
83 that are in any respect unfairly discriminatory. If the company or the
84 Pool chooses to revise the filing based on the state rating bureau's
85 objections, the earliest date upon which the filing may be used, if no
86 earlier date is agreed upon by the company and the division, shall be
87 sixty-five days from the division's receipt of the original filing. The
88 commissioner shall commence any hearing pursuant to this subsec-
89 tion within twenty-one days of division receipt of the filer's request
90 for a review of the state rating bureau's written reasons for disap-
91 proval of the filing. In the case of an individual company filing, the
92 commissioner shall, by written decision, disapprove the filed LCM
93 after the hearing if and only if she finds contains one or more of the
94 substantive or formal failures set forth in the disapproval by the state
95 rating bureau. Decisions on LCM hearings shall be issued no later
96 than twenty-one days following commencement of such hearings.

97 In any instance in which either the hearing is not commenced within
98 twenty-one days of receipt of the filer's request or the decision is not
99 issued within twenty-one days of the hearing's commencement the
100 LCM filing shall be deemed approved and become effective no
101 sooner than sixty-five days from the division's receipt of the compa-
102 ny's request for a hearing or the effective date proposed by such
103 company, whichever is the later date.

104 Whenever the commissioner disapproves an individual company
105 LCM filing in accordance with this section, she may, in her sole dis-
106 cretion, authorize the insurer to use either that LCM in effect for
107 such entity prior to the disapproved filing or that LCM most recently
108 placed on file for the Pool. Effective LCMs, whether placed on file
109 by the division as submitted or authorized for use by the commis-
110 sioner pursuant to a hearing as set forth above shall remain in effect
111 at least until July 1 of the following year. Companies need not refile
112 and may continue to use any effective LCMs subsequent to approved
113 changes in prospective loss costs when all the components of such
114 LCMs continue to comply with every provision of this section; pro-
115 vided, however, that the commissioner may at any time after any
116 company's LCM has been in effect for a year, require such company
117 to file a new LCM, indicating what changes are deemed to be
118 required to make such LCM comply with this section.

119 Both the Pool and individual insurers shall have the right to
120 appeal any decision of the commissioner of insurance regarding
121 LCMs pursuant to section fourteen of chapter thirty A, except that
122 all such appeals shall be filed with the supreme judicial court.

1 SECTION 5. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (5), and inserting in place
3 thereof the following:—

4 (5) Insurers' LCM filings shall be in such form and manner as
5 will enable the commissioner of insurance to ensure that all filed
6 LCM components are within the constraints provided by section four
7 and to determine both the filer's basis for its proposed LCM and the
8 premiums such insurer would charge its insureds if such filing were
9 to be approved. When any filing is not accompanied by the informa-
10 tion upon which the insurer supports such filing, or the commis-
11 sioner does not have sufficient information to determine whether
12 such filing meets the requirements of this section, she may require

13 the filer to furnish the information upon which it supports such
14 filing.

15 Each company group having more than one company writing
16 workers' compensation insurance within the commonwealth shall
17 make a single filing containing all the LCMs such group proposes to
18 employ within its entire group, and its filing shall provide objective
19 and not unlawfully discriminatory criteria for placing risks in partic-
20 ular companies within such group. For purposes of this section, a
21 company group's LCMs shall be considered unfairly discriminatory
22 if either (i) they include one or more LCM that is deemed to violate
23 any anti-discrimination statute; (ii) they include one or more LCM
24 that could produce rates that are not uniform within any classifica-
25 tion of risk written within any company; or (iii) they could produce
26 disparate rates within the same industrial classification as between
27 two or more companies within the same company group, and such
28 differences are not entirely a function of objective and not unlaw-
29 fully discriminatory criteria filed along with such group's LCMs.
30 Nothing in this paragraph shall be construed to prohibit companies
31 from utilizing policyholder dividend plans that return diverse divi-
32 dends within any class at the close of a policy period based on com-
33 pany or individual risk performance; provided, however, that no
34 specified dividend amounts may be promised or paid to policy-
35 holders in advance of annual declarations.

36 The commissioner may promulgate rules or regulations as
37 deemed necessary to carry out the provisions of this section.

1 SECTION 6. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (6), and inserting in place
3 thereof the following:—

4 (6) Where a claim against an insured that has affected such
5 insured's experience rating has been found non-compensable, or
6 where an insurer recovers previously paid workers' compensation
7 benefits from a negligent third party, or where an insurer has been
8 reimbursed by the insured or the Workers' Compensation Trust Fund
9 for payments made pursuant to subsection two of section sixty-five,
10 the insurer shall submit a revised statistical unit report to the appro-
11 priate rating bureau within sixty days of such finding, recovery or
12 reimbursement.

1 SECTION 7. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (7), and inserting in place
3 thereof the following:—

4 (7) The commissioner of insurance shall, by the use of experience
5 rating credits, the institution of a payroll cap on premium computa-
6 tion, or other method, provide for equitable distribution of premiums
7 among employers paying higher than average wages and those
8 paying lower than average wages.

1 SECTION 8. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (8), and inserting in place
3 thereof the following:—

4 (8) The advisory council established pursuant to section fifteen of
5 chapter twenty-three E may request loss data from any insurance
6 company or rating organization. Any insurance company or rating
7 organization that is the recipient of such a request may, if it believes
8 that the request is unduly burdensome or unreasonable, file a motion
9 to be heard by the commissioner of insurance concerning whether all
10 or part of the request requires response. The commissioner of insur-
11 ance may, if the commissioner finds the request is unduly burden-
12 some or unreasonable, deny the request in whole or in part.

13 At any prospective loss cost or Pool LCM hearing conducted pur-
14 suant to this section, the advisory council may present a written
15 statement and oral testimony relating to any issues that may arise
16 during the course of such hearing. Said advisory council may not
17 cross-examine witnesses produced by other parties or appeal any
18 decision of the commissioner.

1 SECTION 9. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsections (9), (10), (11), (12), (13), (14),
3 (15), (16), and (17) and inserting in place thereof the following:—

4 (9) (a) The commissioner shall make a finding on the basis of
5 information submitted in any prospective loss cost filing made pur-
6 suant to this section that the insurer or insurers employ cost control
7 programs and techniques acceptable to the commissioner which have
8 had or are expected to have a substantial impact on fraudulent claim
9 costs, unnecessary health care costs, and any other unreasonable loss
10 costs, as well as on the efficient and adequate collection of the
11 appropriate premium charges owed the insurer or insurers. If the

12 In reviewing the appropriateness of the rating organization's filed
13 multipliers for expense and for profit-and-contingency, the commis-
14 sioner shall be guided by a review of the most recent company LCM
15 filings and shall endeavor to place such Pool components within the
16 voluntary market range; provided, however, that the Pool profit-and-
17 contingency component shall reflect any data that indicates that the
18 risk of covering randomly assigned exposures may be slightly higher
19 than that of covering similar risks freely chosen by an insurer, and
20 provided further that the components shall reflect any changes in the
21 economic and company expense environments since the voluntary
22 market LCMs reviewed were last placed on file. It shall be prima
23 facie evidence of the reasonability of a Pool profit and contingency
24 multiplier that such multiplier falls within the range prescribed
25 below for individual company filings of such multipliers. Each
26 industry-wide loss cost filing and Pool LCM filing shall, if not dis-
27 approved, be effective as of July 1 of the year following completion
28 of the hearing on prospective loss costs. Decisions disapproving
29 Pool LCMs shall indicate what changes are deemed necessary to
30 make such LCMs acceptable to the Division.

31 (b) Except as provided below with respect to filings already on
32 file and that continue to be in compliance with this section, each
33 company that is a member of the bureau duly designated by the com-
34 missioner to make such filings shall, subsequent to the annual
35 approval of an industry-wide prospective loss cost filing and the
36 placing on file of a Pool LCM, submit to the division of insurance an
37 LCM filing upon which it desires its rates to be based. Individual
38 companies not belonging to said rating bureau must also make sepa-
39 rate filings of their LCMs subsequent to approval of their estimate of
40 prospective company loss costs. In making individual company loss
41 cost and LCM filings, due consideration shall be given by an insurer
42 to its past and prospective loss and allocated loss adjustment
43 expense experience within and outside this commonwealth, to cata-
44 strophe hazards, if any, to a reasonable margin for underwriting
45 profit and contingencies, to past and prospective expense both coun-
46 trywide and those specially applicable to this commonwealth, and to
47 all other relevant factors within and outside this commonwealth,
48 including the experience or judgment of the insurer.

49 commissioner does not so find, the commissioner may disapprove
50 such filing. The commissioner shall also have authority to make
51 findings, after a hearing on any prospective loss cost filing made
52 pursuant to this section, that the proposed loss costs are excessive
53 due to the failure of the insurer or insurers to utilize adequate pro-
54 grams to control loss costs or to collect the appropriate premium
55 charges. If the commissioner so finds, she shall disapprove such a
56 filing or, in the alternative, shall limit in any manner determined to
57 be appropriate the amount of any adjustment in premium charges
58 based upon changes in loss costs and premium collections. The
59 commissioner may issue regulations designed to further achievement
60 by insurers of adequate controls on loss costs and of adequate collec-
61 tion of the appropriate premium charges owed to the insurers.

62 (b) The commissioner of insurance shall promulgate reasonable
63 rules and statistical plans, which may be modified from time to time
64 and which shall be used thereafter by each insurer in the recording
65 and reporting of its loss and expense experience, in order that the
66 experience of all insurers may be made available at least annually in
67 such form and detail as may be necessary to aid the commissioner in
68 the performance of her duties. In promulgating such rules and plans,
69 the commissioner shall give due consideration to the rating systems
70 on file with the division and, in order that such rules and plans may
71 be as uniform as is practicable among the various states, to the rules
72 and to the form of the plans used for statistical reporting in other
73 states. The commissioner may designate one or more rating organi-
74 zations or other agencies to assist in gathering such experience and
75 making compilations thereof, and such compilations shall be made
76 available, subject to reasonable rules promulgated by the commis-
77 sioner, to insurers and rating organizations. Any such statistical
78 agent appointed by the commissioner pursuant to this section to
79 assist in the gathering, compilation and dissemination of statistical
80 data shall be authorized to assess reporting companies for the rea-
81 sonable costs of such services, as approved by the commissioner. In
82 order to further the uniform administration of rate regulatory laws,
83 every statistical agent and rating organization designated by the
84 commissioner and every insurer that is not a member of any such
85 rating organization shall share the information and experience neces-
86 sary for the calculation of experience modifications and other deriv-
87 able elements from approved rating plans with every other

88 non-member insurer, approved statistical agent, and rating organiza-
89 tion requiring such information and experience in order to estimate
90 loss costs or LCMs for its own insureds or those of its members or
91 subscribers. Any statistical plan promulgated by the commissioner
92 pursuant to this section may include provisions for reasonable fines
93 or other penalties for late or inaccurate reporting, and shall provide
94 for a process by which insurers may appeal any such penalties.
95 Failure to cooperate with the commissioner's statistical agent or to
96 pay any penalties levied pursuant to this section may subject insurers
97 to suspension, revocation, or other limitation of the right to offer
98 insurance in the commonwealth, subject to the provisions of section
99 4 of chapter 175.

1 SECTION 10. Section 65 of Chapter 152 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended in subsec-
3 tion (5), by adding at the end thereof the following:—

4 For purposes of making assessments pursuant to this section, each
5 company's standard premium shall be put at Pool level. "Standard
6 premium" as used in this section, and as it is used as a basis for the
7 equitable distribution of losses or other costs associated with the
8 Assigned Risk Pool under section sixty-five C, shall be as defined
9 by the Massachusetts Workers' Compensation Statistical Plan,
10 approved by the Commissioner of Insurance; provided, however,
11 that any such definition shall require that standard premium shall be
12 subsequent to the application of experience modification and any
13 credits applied under the Massachusetts Construction Credit Pro-
14 gram, but shall be prior to the application of any large deductible
15 credits or All Risk Rating Program charges.

1 SECTION 11. Section 65A of Chapter 152 of the General Laws,
2 as appearing in the 2004 Official Edition, is hereby amended by
3 striking out the first two sentences and inserting in place thereof the
4 following:—

5 Any employer whose application for voluntary workers' compen-
6 sation insurance is rejected or not accepted by at least two company
7 groups within five days may make application to the duly appointed
8 assigned risk pool administrator for admission to the Pool. In order
9 for such an employer to be eligible for such admission, the employer
10 shall have complied substantially with this section, as well as with

11 all laws, orders, rules and regulations in force and effect relating to
12 the welfare, health and safety of his employees and shall not be in
13 default of payment of any premium for workers' compensation
14 insurance. Upon receipt of a completed application accompanied by
15 evidence of the company group declinations of coverage referenced
16 above from an employer otherwise meeting the requirements of this
17 section, said administrator shall designate an insurer who shall forth-
18 with, upon receipt of payment for the premium therefor, issue to
19 such employer a guaranteed cost policy of insurance at rates calcu-
20 lated in the manner set forth in section 53A to provide all compensa-
21 tion required by this chapter. Nothing in this chapter shall be
22 construed to require any employer written through the Pool to accept
23 a voluntary offer of coverage at a cost in excess of the cost of con-
24 tinued or renewed residual market coverage or to require the Pool to
25 non-renew any Pool risk that has received a voluntary offer at pre-
26 miums that are either higher than those in the Pool or that require the
27 payment of premiums or loss-reimbursements that may be affected
28 by losses occurring during the same policy period for which cov-
29 erage is being offered. The commissioner may, however, consistent
30 with this section and in her sole discretion, order occasional manda-
31 tory non-renewals of policies written through the Pool, require new
32 Pool applicants to provide affirmations or other evidence of their
33 inability to obtain voluntary market coverage, or undertake other
34 such depopulation initiatives deemed to be appropriate. To assist
35 both new businesses seeking coverage in the voluntary market and
36 currently insured employers seeking the lowest premiums available,
37 the Division shall annually post on its website the percentage differ-
38 ences between the Pool rates and the rates at which workers' com-
39 pensation is being sold pursuant to the most recently filed individual
40 company LCMs.

1 SECTION 12. In August of any year in which either the Hirsch-
2 Hirfindahl Index of market concentration for the Massachusetts
3 workers' compensation market rose above 1,500 during the prior
4 year, or the Commissioner, for any other reasons, believes either that
5 competition may have been insufficient to protect consumer interests
6 or may have been conducted in a manner that was either detrimental
7 to a healthy competitive market or to quality workers' compensation
8 insurance products being widely offered in a non-discriminatory

9 manner at reasonable prices, she may hold a hearing on the state of
10 competition in the workers' compensation market. If the primary
11 reason for the commissioner's belief that the workers' compensation
12 market is insufficiently competitive is a function of either (i) the
13 residual market pool's contribution to the Hirsch-Hirfindahl Index of
14 more than 30% or (ii) a significant change in the residual market
15 load borne by voluntary market carriers, the Commissioner may
16 make an adjustment to the Pool profit and contingency multiplier at
17 the next loss cost proceeding without holding a hearing on the state
18 of competition in the workers' compensation market. Decisions on
19 any market competition hearing held pursuant to this section shall be
20 issued no later than September 15th of the year in which such
21 hearing is held. If the Commissioner finds, based on clear and con-
22 vincing evidence produced at such hearing, both that (i) competition
23 as allowed by this section has not sufficiently protected either broad
24 consumer or industry interests during the prior year, and (ii) admin-
25 istered pricing would better serve such interests, she shall order the
26 rating bureau designated to file industry loss costs under this section
27 to instead file overall rates on behalf of the entire industry on each of
28 the next two filing dates. In such instances, all companies shall be
29 required to utilize only approved industry-wide rates during each of
30 the next two rate years. The hearings on such bureau rate filings
31 shall be conducted within the same time frames as those set forth in
32 this chapter for prospective loss cost filings. After such two-year
33 period, prices shall again be determined through the use of prospec-
34 tive loss cost filings and residual market and company LCMs as set
35 forth herein. Market competition hearings under this section shall
36 not be held during any year following the issuance of an industry-
37 wide rate approval.

1 SECTION 13. This act shall take effect sixty days after enact-
2 ment. Rates and classifications in effect prior to that date shall
3 remain in effect thereafter until new rates and classifications become
4 effective pursuant to the provisions of this act.